

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE BINAIRD,	§
	§
Defendant Below-	§ No. 272, 2010
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID 0709033236
	§
Plaintiff Below-	§
Appellee.	§

Submitted: August 20, 2010

Decided: November 1, 2010

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 1st day of November 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) In March 2008, a Superior Court jury convicted the defendant-appellant, Andre Binaird, of second degree assault, possession of a deadly weapon during the commission of a felony, first degree criminal trespass (as a lesser included offense to the indicted charge of second degree burglary), criminal mischief, and noncompliance with the conditions of bond. The Superior Court found Binaird to be a habitual offender and sentenced him on the second degree assault charge to eight years at Level V incarceration. On

the remaining convictions, the Superior Court sentenced him to a total period of eight years and sixty days at Level V incarceration to be suspended after serving seven years for probation. This Court affirmed Binaird's conviction on direct appeal.¹ Thereafter, Binaird filed a petition for postconviction relief, which the Superior Court denied. This appeal ensued.

(2) In his opening brief on appeal, Binaird raises multiple claims of ineffective assistance of counsel. He contends that his trial counsel was ineffective because he failed to: (i) conduct a DNA analysis of blood found on a knife used during the assault on the victim; (ii) object to the prejudicial joinder of Binaird's criminal offenses; (iii) object to the prosecutor's contact with one of the jurors; (iv) object to the State's interjection of race as an issue in the case; (v) object to the State's failure to preserve evidence; and (vi) object to the trial court's submission of a second degree burglary charge to the jury. He also alleges that his counsel was ineffective on appeal for failing to argue that there was insufficient evidence to sustain his conviction for second degree assault. Finally, Binaird asserts that the trial court abused its discretion in failing to act on his pro se motion for a judgment of acquittal. With respect to this last issue, we note that Binaird's argument is factually incorrect. The Superior Court, in fact, denied his pro se motion for

¹ *Binaird v. State*, 967 A.2d 1256 (Del. 2009).

judgment of acquittal on April 30, 2008. Accordingly, we find no merit to his claim.

(3) With respect to his remaining claims alleging ineffective assistance of counsel, in order to establish such a claim, Binaird must show that: (a) his counsel's representation fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different.² There is a strong presumption that counsel's representation was professionally reasonable.³

(4) Having carefully considered the parties' briefs and the record on appeal, we find it manifest that the judgment below should be affirmed on the basis of the Superior Court's well-reasoned decision dated April 26, 2010. The record reflects that the Superior Court carefully reviewed each of Binaird's claims concerning his counsel's allegedly deficient performance. We find no error in the Superior Court's conclusion that Binaird's claims of ineffective assistance were unsupported by the record and, thus, legally insufficient to establish that his counsel's performance fell below an objective standard of reasonableness and was prejudicial.⁴

² *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

³ *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990).

⁴ *See Strickland v. Washington*, 466 U.S. 668, 688 (1984).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice